

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

10/23/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2002-000335

FILED: \_\_\_\_\_

STATE OF ARIZONA

WEBSTER CRAIG JONES

v.

LYNDON SCOTT BOWARD

THOMAS M HOIDAL

MESA CITY COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

MESA CITY COURT

Cit. No. #793102

Charge: 1. D.U.I. INTOXICATING LIQUOR  
2. DRIVING WITH BAC OF .08 OR ABOVE W/IN TWO HRS.  
OF DRIVING  
3. IMPROPER LEFT TURN

DOB: 05/01/59

DOC: 12/01/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

10/23/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2002-000335

This matter has been under advisement since its assignment on October 1, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Mesa City Court, the exhibits made of record, and the Memoranda submitted by counsel.

On December 1, 2001, Appellant was arrested in the City of Mesa and charged with: (1) Driving Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. 28-1381(A)(1); (2) Driving with a Blood Alcohol Content Greater than .08 Within 2 hours of Driving, a class 1 misdemeanor in violation of A.R.S. 28-1381(A)(2); and (3) Improper Right Hand Turn, a civil traffic offense in violation of A.R.S. Section 28-751.1. Prior to trial, Appellant filed a Motion to Suppress all evidence which was the fruit of an alleged unreasonable stop, Appellant claimed the police did not have a reasonable suspicion to stop his vehicle. The trial court conducted an evidentiary hearing on April 9, 2002. The trial judge denied Appellant's Motion to Suppress. Thereafter, Appellant and the State waived their rights to a jury trial and submitted the case to the court on the basis of stipulated evidence. Appellant was found guilty. A timely Notice of Appeal was filed by the Appellant in this case.

Appellant claims that the trial court erred in failing to suppress all evidence gathered after an unreasonable stop of Appellant. Appellant claims that the Mesa Police Officers did not have a "reasonable suspicion" which would justify the stop of Appellant's vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had committed, or was about to commit, a crime.<sup>1</sup> These facts and inferences when considered as a whole the ("totality of the

---

<sup>1</sup> Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998); Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

10/23/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2002-000335

circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."<sup>2</sup> A.R.S. Section 13-3883(B) also provides in pertinent part authority for police officers to conduct a "investigative detention":

A peace officer may stop and detain a person as is reasonably necessary to investigate an actual violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.<sup>3</sup> In Whren<sup>4</sup> the United States Supreme Court upheld the District's Court denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.<sup>5</sup>

---

<sup>2</sup> United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, (1981).

<sup>3</sup> Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

<sup>4</sup> Id.

<sup>5</sup> Id.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

10/23/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2002-000335

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.<sup>6</sup> An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.<sup>7</sup> This Court must review those factual findings for an abuse of discretion.<sup>8</sup> Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.<sup>9</sup> This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.<sup>10</sup>

In this case, the trial judge explained her ruling:

In this situation, it is the belief of this officer that there was a violation that he viewed under those circumstances. That's where we get into the Fourth Amendment. ...

That is reasonable under the court's interpretation as it goes on in case law after case law, that if the officer believed he observed a violation occur, he has a right to stop the car. Once he stops that car, then becomes the criminal investigation for the DUI once he observes some clues or whatever of impairment, and then becomes the probable cause issue as for an arrest. Before we get to the arrest situation in the criminal investigation...(the question is) is there a reasonable suspicion that something did occur(?)

---

<sup>6</sup> State v. Gonzalez-Gutierrez, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); State v. Magner, supra.

<sup>7</sup> Id.

<sup>8</sup> State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

<sup>9</sup> State v. Chapple, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

<sup>10</sup> State v. Gonzalez-Gutierrez, 187 Ariz. at 118, 927 P.2d at 778; State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

10/23/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2002-000335

On that night in question, Officer Ybarra's belief is that he (the Defendant) did make a turn into the right curb lane. Therefore, when he stopped this, was this a reasonable intrusion into this personal life? And the court is going to state that the court has held over and over again that this is a good faith belief on this officer's part, so, therefore, I'm going to deny the Motion to Suppress.<sup>11</sup>

In her summary of the facts, the trial judge found credible Officer Ybarra's explanation that he stopped the Appellant's vehicle because of its improper movement from lane to lane. Clearly, testimony was presented to the trial judge that would justify a belief that Appellant had committed a traffic violation (A.R.S. Section 28-751.1).

Having determined that a factual basis exists to support the trial judge's ruling, this Court also determines de novo that these facts do establish reasonable basis for the Mesa Police to have stopped the automobile driven by the Appellant.

IT IS THEREFORE ORDERED sustaining the judgments of guilt and sentences imposed by the Mesa City Court.

IT IS FURTHER ORDERED remanding this matter back to the Mesa City Court for all further and future proceedings in this case.

---

<sup>11</sup> R.T. of April 9, 2002, at pages 81-82.  
Docket Code 512